

Rhode Island, Texas, Vermont, Virginia, and West Virginia. Other States may be added as appropriate.

(3) *Transition.* Notwithstanding paragraphs (b) (1) and (2) of this section, the 1986 adverse effect rate for agricultural employment (except sheepherding) in the following States, and for Florida sugarcane work, shall be computed by adjusting the 1981 adverse effect rate (computed pursuant to 20 CFR 655.207(b)(1), 43 FR 10317; March 10, 1978) by the percentage change between 1980 and 1985 in the U.S. Department of Agriculture annual average hourly wage rates for field and livestock workers (combined) based on the USDA Quarterly survey: The States listed at 20 CFR 655.207(b)(2) (1985).

(c) In no event shall an adverse effect rate for any year be lower than the hourly wage rate published in 29 U.S.C. 206(a)(1) and currently in effect.

[43 FR 10313, Mar. 10, 1978, as amended at 44 FR 32212, June 5, 1979; 48 FR 40175, Sept. 2, 1983; 50 FR 25708, June 21, 1985; 51 FR 24141, July 2, 1986; 52 FR 11466, Apr. 9, 1987]

**§ 655.208 Temporary labor certification applications involving fraud or willful misrepresentation.**

(a) If possible fraud or willful misrepresentation involving a temporary labor certification application is discovered prior to a final temporary labor certification determination, or if it is learned that the employer or agent (with respect to an application) is the subject of a criminal indictment or information filed in a court, the RA shall refer the matter to the INS for investigation and shall notify the employer or agent in writing of this referral. The RA shall continue to process the application and may issue a qualified temporary labor certification.

(b) If a court finds an employer or agent innocent of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an employer or agent, the RA shall not deny the temporary labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) If a court or the INS determines that there was fraud or willful misrepresentation involving a temporary

labor certification application, the application shall be deemed invalidated, processing shall be terminated, and the application shall be returned to the employer or agent with the reasons therefor stated in writing.

**§ 655.209 Invalidation of temporary labor certifications.**

After issuance, temporary labor certifications are subject to invalidation by the INS upon a determination, made in accordance with that agency's procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the temporary labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a Regional Administrator, Employment and Training Administration or to the Administrator, the Regional Administrator or Administrator as appropriate, shall notify the INS in writing.

**§ 655.210 Failure of employers to comply with the terms of a temporary labor certification.**

(a) If, after the granting of a temporary labor certification, the RA has probable cause to believe that an employer has not lived up to the terms of the temporary labor certification, the RA shall investigate the matter. If the RA concludes that the employer has not complied with the terms of the labor certification, the RA may notify the employer that it will not be eligible to apply for a temporary labor certification in the coming year. The notice shall be in writing, shall state the reasons for the determination, and shall offer the employer an opportunity to request a hearing within 30 days of the date of the notice. If the employer requests a hearing within the 30-day period, the RA shall follow the procedures set forth at § 658.421(i) (1), (2) and (3) of this chapter. The procedures contained in §§ 658.421(j), 658.422 and 658.423 of this chapter shall apply to such hearings.

(b) No other penalty shall be imposed by the employment service on such an employer other than as set forth in paragraph (a) of this section.